IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 99 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARABHAI TECHONOLOGICAL DEVLOPMENT SYNDICATE PVT LTD
Versus
COMMISSIONER OF INCOME-TAX

Appearance:
1. INCOME TAX REFERENCE No. 99 of 1986
MR MR RK PATEL FOR MR KC PATEL for Applicant.
MR AKIL QURESHI WITH MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following two questions for the opinion of this Court.

"1 Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee was not entitled to gratuity liability of Rs.55,680/- as it has not arisen and whether the said finding of the Tribunal is not against the provisions of Industrial Dispute Act and Payment of Gratuity Act ?

2 Whether, on the facts and in the circumstances of the case, the Tribunal was further justified in law in holding that the assessee was not entitled to claim foreign tour expenses of Shri V.P.Mehta and whether the above finding of the Tribunal to the effect that the assessee has not established requisite nexus is not against the evidence on record and the said finding is not reasonable ?"

2 The assessment year is 1978-79 and the relevant previous year is the year ended 31/3/1978. During the course of assessment proceedings the assessee applicant claimed deduction of gratuity amounting to Rs.55,680/- as well as Rs.31,843/- being foreign tour expenses incurred on Shri V.P.Mehta. As the Income Tax Officer disallowed both the claims the assessee preferred an appeal before the C.I.T.(Appeals) and in the appeal also the assessee's claims were rejected. Being aggrieved the assessee carried the matter in appeal before the Tribunal and the Tribunal for the reasons stated in its order dated 30/1/1984 confirmed the findings of both the lower authorities. Thus, it is at the instance of the assessee that the aforesaid two questions have been raised and referred.

3 The assessee company on 18/3/1978 issued a general notice to all its workmen to the effect that the business of the establishment at Ahmedabad had considerably dwindled and there was uncertainty of getting enough work. Therefore, as it was not feasible for the company to continue with its business activities a decision to close down the business at Ahmedabad

establishment was arrived at in the Board of Directors Meeting, and accordingly under the provisions of Industrial Disputes Act, the workmen were being informed that with effect from 19/5/1978 the business of this establishment will be closed down and that the workmen will stand discharged from the services of the company effective from that date. Thereafter, by another notice of the same date i.e.18/3/1978 the workmen were also informed that as there was no work available, the workmen should report for duty on 1/4/1978 and that their presence was not required in the office on and from 28/3/1978 upto and including 31/3/1978. However, it was further stated in the said notice that inspite of such absence the workmen will be paid salary as usual for the said period. Then on 1/4/1978 and 16/4/1978 similar notices were issued and the workmen were advised not to report for duty with effect from 1/4/1978 upto and including 17/4/1978 subject to the same stipulation of the salary being paid to them for the said period.

4. On 18/4/1978 a further notice was issued by the assessee company reiterating what was stated in its earlier notice dated 18/3/1978 and then giving the statutory notice of one month for the purpose of closure. An extract from the said notice as is relevant is reproduced hereunder :

"All workmen concerned are hereby given one month's notice as required in law and they may note that their services would stand terminated from the expiry of the said period i.e. effective from the close of business on 19th May,1978 and they would be paid compensation equivalent to retrenchment compensation, gratuity, if any, wages in lieu of privilege leave and salary for the period upto 19th May,1978.

Workmen are further informed that there being no work available at present their presence is not required in the office. Salary for the month of April,1978, may be collected from the office on 1st May,1978.

Above dues such as retrenchment compensation, gratuity, if any, wages in lieu of privilege leave and salary for the period from 1st May,1978 to 19th May,1978 may be collected from the office during the working hours either on 17th May,1978 or on 19th May,1978, i.e. before 19th May,1978."

5. In the backdrop of the aforesaid facts and circumstances, on behalf of the assessee Company Mr.R.K.Patel contended that the liability to pay gratuity accrued on 18/3/1978, viz. the date of the 1st notice of closure because according to him the notice of closure made it clear that the establishment was no longer in business and in light of the subsequent events viz., infact, the services of the workmen were terminated and amounts of gratuity due to them paid on the relevant day in the subsequent accounting period. In support of this proposition reliance was placed on the provisions of section 40A(7)(b)(i) of the Income Tax Act,1961 as was applicable for the year under consideration. The relevant portion of the said section as is material for our purpose is as under:

"(7)(a) xxx xxx
(b) Nothing in clause (a) shall apply in relation to -
(i) any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year;"

6. It was submitted that clause (a) of sub-section 7 of section 40A of the Act laid down a general embargo on allowance of deduction in relation to any provision made for the payment of gratuity, but clause (b) carved out an exception. It was further submitted that clause (b) sub-clause (i) permitted a deduction in case the stipulated conditions were specified by an assessee, and the assessee company in the present case fulfilled the statutory conditions. It was stated that a provision was made by the assessee company on the basis of system of accounting regularly employed i.e. mercantile system of accounting and such provision was for the purpose of payment of gratuity that had become payable during the period of account, but had actually been paid after the closure of the accounting period. In support of this submission reliance was placed on the decision of Supreme Court in the case of Shree Sajjan Mills Ltd. Vs. C.I.T.256 ITR 585 and in the case of Calcutta Company Ltd. Vs. CIT 37 ITR 1.

7. Mr.Akil Qureshi accompanied by Mr.M.R.Bhatt

supported the order of the Tribunal by contending that gratuity was payable only in the event of specified contingency happening. It was submitted that Section 4 of the Payment of Gratuity Act provides that gratuity would become statutorily payable either on superannuation, or on retirement or termination of service or on expiry of workman. That in the present case neither of the conditions stood fulfilled during the previous year and hence it could not be stated that there was any accrual of liability as understood under the Payment of Gratuity Act and/or as per the system of accounting regularly employed viz.mercantile system of accounting. Elaborating this submission it was contended that vide notice dated 18/3/1978 only an intention of closure was expressed, that the statutory notice for closure was issued on 18/4/1978 and infact as can be seen from the wording of the said notice dated 18/4/1978 the closure was effected with effect from closing hours of business on 19/5/1978, and therefore, no liability had arisen in the hands of the assessee company which would entitle the assessee to claim deduction either as per system of accounting or under any of the provisions of the Act.

8. We have heard both the Counsel and after taking into consideration the decision cited at the bar we find no reason to interfere with the order of the Tribunal. As can be seen from the provision of section 40A(7)(b)(i) of the Act any provision made by the assessee for the purpose of payment of any gratuity is allowable provided the same has become payable during the previous year. As can be seen from the provisions of the Payment of Gratuity Act, no event had happened as provided in section 4 of the said Act during the period of account which would permit the assessee company to stake its claim of the statutory liability having become payable during the year of account. As can be seen from the contents of the various notices commencing from the notice of 18/3/1978 and ending with notice dated 18/4/1978, in each of the notice it has specifically been provided that though the workmen should not report for duty in absence of any work being available, the workman shall be paid the salary for the period during which the notice is in effect. The last such period expires only on 19/5/1978, that means till that point of time the workmen were effectively in service of the assessee company and if that be so, it cannot be stated that there was any closure of establishment as understood within the meaning of provision of section 25(FFF) of the Industrial Disputes Act. Infact, the notice dated 18/4/1978 itself in no uncertain terms laysdown that the services would

stand terminated from the expiry of the notice period i.e. effective from the close of business on 19/5/1978.

9. Therefore, even if a provision has been made by the assessee company on the basis of its decision to close down the establishment, legally and infact the establishment can be said to have been closed down only with effect from 19/5/1978 and the said date falls beyond the accounting period i.e. 31/3/1978. Thus, in absence of any termination of services of the workmen there was no occasion for any liability to arise within the meaning of provisions of Payment of Gratuity Act.

10. The Tribunal was, in our opinion, justified in holding that the actual termination tookplace long after the close of accounting period and that even under mercantile system of accounting there was no accrual as the event of retrenchment took place only after the close of the accounting period.

11. In so far as the second question is concerned, it was contended on behalf of the assessee that an employee of the company Shri P.N.Shah and Shri V.P.Mehta, Tax Consultant of the assessee were invited to International Tax Planning Meeting at Geneva. That the assessee company agreed to bear the expenses for the journey and participation so as to enlarge the scope and field of services rendered by the assessee company through these persons. It was submitted that the expenses in case of Shri P.N.Shah had been allowed by the assessing officer but those relating to Shri V.P.Mehta were disallowed on the ground that there was no nexus between the business carried on by the assessee company and the trip undertaken by Shri V.P.Mehta. It was further contended that Shri V.P.Mehta had necessary qualification, requisite background and expertise in respect of the taxation laws of foreign countries as well as Indian Taxation Laws and that the information and data collected by him added to know how of the assessee company which enabled the assessee to serve its client in a better manner. Rebutting the contention it was submitted on behalf of the revenue that the Income Tax Officer, C.I.T.(Appeals) and the Tribunal had consistently held that the assessee company had failed to establish the requisite nexus required to show that the expenditure was wholly and exclusively incurred for the purpose of business.

12. The Tribunal has found that the assessee company has not established the requisite nexus necessary for establishing that the expenditure in question was wholly

and exclusively incurred for the purpose of business of the assessee. That no particulars of work done abroad or on return have been furnished. As can be seen from the question raised before us a faint attempt is made to challenge the aforesaid findings being perverse. However, there is nothing on record which would permit us to take a different view of the matter. In view of these circumstances, we do not find any infirmity with the findings recorded by the Tribunal after appreciation of evidence which was there on record before it and hence, we see no good reason to interfere with the order of the Tribunal on this count.

13. The questions referred to us are therefore answered in affirmative i.e. in favour of the revenue and against the assessee with no order as to costs. The Reference stands disposed of accordingly.

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt